RULES

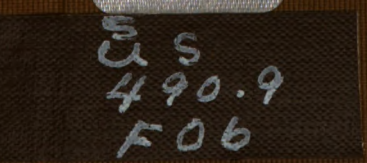
OF THE

UNITED STATES COURTS

FOR THE

DISTRICT OF INDIANA

1906



RULES

OF THE

Circuit and District Courts

OF THE UNITED STATES

FOR THE

DISTRICT OF INDIANA

AND

STATUTES OF THE UNITED STATES RELATIVE THERETO.

COMPILED BY THE CLERK.

PRICE, 50 CENTS.

INDIANAPOLIS:
WM. B. BURFORD, PRINTER, LITHOGRAPHER AND BINDER.
1906.

TERMS.

INDIANAPOLIS—First Tuesdays of May and November.

EVANSVILLE—First Mondays of April and October.

NEW ALBANY—First Mondays of January and July.

FORT WAYNE—Second Tuesdays of June and December.

HAMMOND—Third Mondays of April and October.

CONTENTS.

COMMON LAW AND EQUITY RULES.

ADMIRALTY RULES.

BANKRUPTCY RULES.

RULES.

Order of the District Court, entered January 25, 1865.

Order of District Court.

It is ordered by the court that the rules of the United States circuit court for the district of Indiana, now in force in that court, and also such rules as may hereafter from time to time be adopted by that court, shall, so far as they may be applicable in this court, be the rules of this court during all the time which they shall be operative in said circuit court as its rules.

Order of the Circuit Court, entered December 27, 1871.

Order of Circuit Court.

Ordered by the court that the following revision of the rules of this court be adopted; and that all rules not herein included are rescinded.

§ 913. **Mesne process, and proceedings in equity and admiralty.**—The forms of mesne process and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the circuit and district courts, shall be according to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the supreme court, by rules prescribed, from time to time, to any circuit or district court, not inconsistent with the laws of the United States.

§ 914. **Other than equity and admiralty causes.**—The practice, pleadings, and forms and mode of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such circuit or district courts are held, any rule of court to the contrary notwithstanding.

§ 917. **Power of the supreme court to regulate the practice of circuit and district courts.**—The supreme court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the circuit and district courts.

§ 918. Practice in the several courts to be regulated by their own rules.—The several circuit and district courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the supreme court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings.

1. Attorneys and counselors at law, who have been admitted to practice in the supreme court of this state, or in the circuit or district court of the United States for any other district, shall, on motion, be admitted to practice in this court. Each person thus admitted shall be sworn to support the constitution of the United States, and faithfully to discharge the duties of an attorney and counselor at law in this court. He shall furnish the clerk a statement of his name and residence; his admission shall be entered upon the records of the court, and a certificate thereof, under the seal of the court, shall be furnished him; and he shall pay the clerk therefor three dollars..

Attorneys.

§ 713. Judges prohibited from practicing law.—It shall not be lawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law. And any person offending against the prohibition of this section shall be deemed guilty of a high misdemeanor.

§ 747. Parties may plead their own causes.—In all the courts of the United States the parties may plead and manage their own causes personally, or by the assistance of such counsel or attorneys at law as, by the rules of the said courts, respectively, are permitted to manage and conduct causes therein.

§ 748. Officers forbidden to practice as attorneys.—No clerk, assistant or deputy clerk, of any territorial, district or circuit court, or of the court of claims, or the supreme court of the United States, or marshal or deputy marshal of the United States within the district for which he is appointed, shall act as a solicitor, proctor, attorney or counsel in any cause depending in either of said courts, or in any district for which he is acting as such officer.

§ 749. Penalty.—Whosoever violates the preceding section shall be stricken from the roll of attorneys by the court, upon complaint, upon which the respondent shall have due notice, and be heard in his defense; and in the case of a marshal or deputy marshal so acting, he shall be recommended by the court for dismissal from office.

32 Stats. at Large, 476. Admission Fee.—No amount in excess of one dollar shall be received from any attorney in connection with his admission to practice in a circuit or district court.

2. Ordered by the court that candidates for admission for practice at the bar of the circuit and district courts of the United States for the district of Indiana, shall be examined by a judge of the court, or by a committee of three members of the bar to be named by the court; and upon favorable determination of the court or its committee the admission shall be allowed: *Provided,* That this rule has no application to any member of the bar who shall have been admitted to the bar of the supreme court or to the bar of the circuit or district court of the United States of any other circuit or district, or to any one who has been admitted to the bar by the supreme court of any state on examination.

Adopted Feb. 3, 1877. Examination for Admission.

Proviso.

3. In all cases the clerk shall require surety for costs before issuing a writ. The following form upon the precipe, writ, or declaration, shall be sufficient:

Security for Costs.

"I, A. B., acknowledge myself surety for costs in this cause."

In default of payment of costs within sixty days after they shall become due, it shall be lawful for the clerk to issue a fee bill and execution against the surety for such costs; and the marshal shall proceed upon such writ as in other cases.

Form of Bond.

Instead of such surety for costs, the party bringing suit may deposit with the clerk, as a security for costs, such a sum of money as in the opinion of the clerk will be sufficient to pay all the costs which will probably accrue in the suit; which money shall be applied to the payment of costs for which the plaintiff may be liable as they accrue; and the overplus, if any, shall be returned to the plaintiff after the suit is ended.

Deposit.

§ 968. **No costs on recovery of less than five hundred dollars.**—When in a circuit court a plaintiff in an action at law originally brought there, or a petitioner in equity other than the United States, recovers less than the sum or value of five hundred dollars, exclusive of costs, in a case which can not be brought there unless the amount in dispute, exclusive of costs, exceeds said sum or value; or a libelant, upon his own appeal, recovers less than the sum or value of three hundred dollars, exclusive of costs, he shall not be allowed, but at the discretion of the court may be adjudged to pay costs.

§ 972. **In copyright suits, costs.**—In all recoveries under the copyright laws, either for damages, forfeitures, or penalties, full costs shall be allowed thereon.

§ 973. **Costs, infringement of patent.**—When judgment or decree is rendered for the plaintiff or complainant, in any suit at law or in equity,

for the infringement of a part of a patent, in which it appears that the patentee, in his specification, claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the original and first inventor, no costs shall be recovered, unless the proper disclaimer, as provided by the patent laws, has been entered at the patent office before the suit was brought.

§ 977. **Costs, non-joiner or action.**—If several actions or processes are instituted in a court of the United States or one of the territories, against persons who might legally be joined in one action or process touching the matter in dispute, the party pursuing the same shall not recover on all of the judgments therein which may be rendered in his favor, the costs of more than one action or process, unless special cause for said several actions or processes is satisfactorily shown on motion in open court.

§ 982. **Attorney liable for costs vexatiously increased by him.**—If any attorney, proctor, or other person admitted to conduct causes in any court of the United States, or of any territory, appears to have multiplied the proceedings in any cause before such court, so as to increase costs unreasonably and vexatiously, he shall be required, by order of the court, to satisfy any excess of costs so increased.

§ 983. **Bill of costs, how taxed.**—The bill of fees of the clerk, marshal, and attorney, and the amount paid printers and witnesses, and lawful fees for exemplifications and copies of papers necessarily obtained for use on trials in cases where by law costs are recoverable in favor of the prevailing party, shall be taxed by a judge or clerk of the court, and be included in and form a portion of a judgment or decree against the losing party. Such taxed bills shall be filed with the papers in the cause.

§ 984. **Bill of costs to be sworn to.**—Before any bill of costs shall be taxed by any judge or other officer, or allowed by any officer of the treasury, in favor of clerks, marshals, commissioners, or district attorneys, the party claiming such bill shall prove by his own oath, or that of some other person having a knowledge of the facts, to be attached to such bill, and filed therewith, that the services charged therein have been actually and necessarily performed, as therein stated.

27 Stats. at Large, 252. **Suits by poor persons, affidavit, process, appointment of attorney and judgment for costs.**—* * * * Any citizen of the United States entitled to commence any suit or action in any court of the United States, may commence and prosecute to conclusion any such suit or action without being required to prepay fees or costs, or give security therefor before or after bringing suit or action, upon filing in said court a statement, under oath, in writing, that, because of his poverty, he is unable to pay the costs of said suit or action which he is about to commence, or to give security for the same, and that he believes he is entitled to the redress he seeks by suit or action, and setting forth briefly the nature of his alleged cause of action.

SEC. 2. * * After any such suit or action shall have been brought, or that is now pending, the plaintiff may answer and avoid a demand for fees or security for costs by filing a like affidavit, and wilful false swearing in any affidavit provided in this or the previous section shall be punishable as perjury is in other cases.

SEC. 3. * * The officers of court shall issue, serve all process, and per-

form all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases.

SEC. 4. * * The court may request any attorney of the court to represent such poor person, if it deems the cause worthy of a trial, and may dismiss such cause so brought under this act, if it shall be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious.

SEC. 5. * * Judgment may be rendered for costs at the conclusion of the suit, as in other cases: *Provided*, That the United States shall not be liable for any of the costs thus incurred.

Adopted Nov. 2, 1875. Costs on removal of causes.

4. The clerk shall require a bond for costs from the party, whether plaintiff or defendant, who files a record on the removal of a cause from a state court, and the opposite party, on appearing to said cause, shall file a cost bond on his part.

Service of process.

5. In all actions at law when the process has been served fifteen and the declaration filed ten days, the plaintiff shall be entitled to a trial, unless good cause can be shown for a continuance; subject, however to the exceptions in rule 6.

And in those cases where the process shall be issued too late for service before the first day of the term, or shall be issued during term, it may be made returnable at the expiration of fifteen days after service is perfected.

The summons may be served on the defendant personally; or, when that is not practicable, and he is a resident of this district, by leaving a copy thereof at his usual place of residence. An acknowledgment of service on the back of the process, or the voluntary appearance of a defendant, is equivalent to service by the marshal.

On corporations.

Process against a corporation may be served on the president, presiding officer, mayor, chairman of the board of trustees; or, if its chief officer is not found in the district, then upon its cashier, treasurer, secretary, clerk, or general or special agent; or, if it is a municipal corporation, upon its marshal; or, if it is an incorporated library company, upon its librarian; or, if none of the officers aforesaid can be found, then upon any person authorized to transact business in the name of such corporation.

No summons, or the return of service thereof, shall be set aside or be adjudged insufficient, when there is sufficient substance in either to inform the party on whom it has been served that there is an action instituted against him in court, who are the other parties thereto, and when it is answerable.

Defective summons or return.

§ 737. When a part of several defendants can not be served.—When there are several defendants in any suit at law or in equity, and one or more of them are neither inhabitants of nor found within the district in which the suit is brought, and do not voluntarily appear, the court may entertain jurisdiction, and proceed to the trial and adjudication of the suit between the parties who are properly before it; but the judgment or decree rendered therein shall not conclude or prejudice other parties not regularly served with process nor voluntarily appearing to answer; and nonjoinder of parties who are not inhabitants of nor found within the district, as aforesaid, shall not constitute matter of abatement or objection to the suit.

18 Stats. at Large, 470. Absent defendants, how served.—That when in any suit, commenced in any circuit court of the United States, to enforce any legal or equitable lien upon, or claim to, or to remove any encumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of, or found within, the said district, or shall not voluntarily appear thereto, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur, by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks; and in case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court in its discretion, and upon proof of the service or publication of said order, and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but such adjudication shall, as regards such absent defendant or defendants, without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district. And when a part of the said real or personal property against which such proceeding shall be taken shall be within another district, but within the same state said suit may be brought in either district in said state: *Provided, however*, That any defendant or defendants not actually personally notified as above provided may, at any time within one year

after final judgment in any suit mentioned in this section, enter his appearance in said suit in said circuit court, and thereupon the said court shall make an order setting aside the judgment therein, and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law.

§ 739. **Suits against inhabitants of United States to be brought where they reside or are found.**—Except in the cases provided in the next three sections, no person shall be arrested in one district for trial in another, in any civil action before a circuit or district court; and except in the said cases and the cases provided by the preceding section, no civil suit shall be brought before either of said courts against an inhabitant of the United States, by any original process, in any other district than that of which he is an inhabitant, or in which he is found at the time of serving the writ.

§ 740. **Suits not of a local nature in states containing several districts.**—When a state contains more than one district, every suit not of a local nature in the circuit or district courts thereof, against a single defendant, inhabitant of such state, must be brought in the district where he resides; but if there are two or more defendants residing in different districts of the state, it may be brought in either district, and a duplicate writ may be issued against the defendants, directed to the marshal of any other district in which any defendant resides. The clerk issuing the duplicate writ shall indorse thereon that it is a true copy of a writ sued out of the court of the proper district; and such original and duplicate writs, when executed and returned into the office from which they issue shall constitute and be proceeded on as one suit; and upon any judgment or decree rendered therein, execution may be issued, directed to the marshal of any district in the same state.

§ 741. **Suits of a local nature in states containing several districts.**—In suits of a local nature, where the defendant resides in a different district in the same state from that in which the suit is brought, the plaintiff may have original and final process against him, directed to the marshal of the district in which he resides.

§ 742. **When land lies in different districts of same state.**—Any suit of a local nature, at law or in equity, where the land or other subject-matter of a fixed character lies partly in one district and partly in another, within the same state, may be brought in the circuit or district court of either district; and the court in which it is brought shall have jurisdiction to hear and decide it, and to cause mesne or final process to be issued and executed, as fully as if the said subject-matter were wholly within the district for which such court is constituted.

§ 743. **In Indiana.**—In the district of Indiana all actions of which the circuit and district courts have jurisdiction may be instituted in said courts, respectively, held at New Albany and Evansville, in the first instance, by filing the proper pleadings or other papers in the offices of the deputy clerks performing the duties of the clerks of said courts respectively; and all proper and lawful process shall issue therefrom in the same manner as from other circuit and district courts in like cases.

§ 948. **Amendment of process.**—Any circuit or district court may at any time, in its discretion and upon

such terms as it may deem just, allow an amendment of any process returnable to or before it, where the defect has not prejudiced, and the amendment will not injure the party against whom such process issues.

25 Stats. at Large, 433. Defendant not to be arrested in one district for trial in another in civil cases, nor to be sued in district other than that of residence, etc.— * * * * No person shall be arrested in one district for trial in another in any civil action before a circuit or district court; and no civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or defendant.

Continuances.

6. A motion to postpone the trial on account of the absence of evidence can be made only upon affidavit showing the materiality of the evidence expected to be obtained, that due diligence has been used to obtain it, and where the evidence may be; and if it is for an absent witness, the affidavit must show where the witness resides, the probability of procuring his testimony within a reasonable time, what facts the affiant believes the witness will prove, that the affiant believes them to be true, and that they can not be proved by any other witness whose testimony can be as readily procured. If thereupon the adverse party will consent in writing that on the trial such facts shall be taken as true, the trial shall not be postponed for that cause.

§ 957. Delinquents for public money—Judgment at return term, unless, etc.—When suit is brought by the United States against any revenue officer or other person accountable for public money, who neglects or refuses to pay into the treasury the sum or balance reported to be due to the United States upon the adjustment of his account, it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant, in open court (the United States attorney being present), makes and subscribes an oath that he is equitably entitled to credits which had been, previous to the commencement of the suit, submitted to the accounting officers of the treasury and rejected, specifying in the affidavit each particular claim so rejected, and that he can not then safely come to trial. If the court, when such oath is made, subscribed, and filed, is thereupon satisfied, a continuance until the next succeeding term may be granted. Such continuance may also be granted when the suit is brought upon a bond or other sealed instrument, and the defendant pleads *non est factum*, or makes a motion to the court, verifying such plea or motion by his oath, and the court thereupon requires the production of the original bond, contract, or other paper specified in the affidavit. And no continuance shall be granted except as herein provided.

§ 958. **Judgment for suits under postal laws.**—In suits arising under the postal laws the court shall proceed to trial, and render judgment at the return term; but whenever service of process is not made at least twenty days before the return day of such term, the defendant is entitled to one continuance if on his statement the court deems it expedient; and if he makes affidavit that he has a claim against the postoffice department, which has been submitted to and disallowed by the sixth auditor, specifying such claim in his affidavit, and that he could not be prepared for trial at such term for want of evidence, the court, if satisfied thereof, may grant a continuance until the next term.

§ 959. **Judgment for suits on debentures.**—In all suits for the recovery of money upon debentures issued by the collectors of customs, under any act for the collection of duties, it shall be the duty of the court to grant judgment at the return term unless the defendant, in open court, exhibits some plea on oath by which the court is satisfied that a continuance is necessary to the attainment of justice; in which case, and not otherwise, a continuance until the next term may be granted.

§ 960. **Suits on bonds for recovery of duties.**—When suit is brought on any bond for the recovery of duties due to the United States, it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant in open court (the United States attorney being present) makes oath that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district before the said return term; whereupon a continuance may be granted until the next term, and no longer, if the court is satisfied that such continuance is necessary for the attainment of justice.

§ 3231. **Continuance of internal revenue cases.**—It shall be lawful for any court in which any suit or criminal proceeding arising under the internal revenue laws may be pending, to continue the same at any stage thereof, for good cause shown on motion of the district attorney.

7. After the opening of the court each day, and before the docket is called for trials, motions shall be in order. **Motions.**

8. Prior to every term of this court, the clerk shall prepare court and bar dockets, in which he shall set down all causes pending in the court, giving therein the full names of all parties, unless impracticable because of number, the names of the attorneys, and the form of the action **Dockets.**

Said causes shall be set down in the following order, to wit: **Order of Trial.**

First. All criminal cases, including cases of attachment for contempt.

Second. All civil cases at common law.

Third. All chancery causes.

All the cases contemplated by this rule shall be docketed in the order in which they are commenced; and of the criminal and common law cases the clerk shall docket for trial for each day, beginning with the first, as many causes as, in his opinion, can be disposed of on such day. And every cause thus set down for trial shall stand for trial on the day so fixed by the clerk, or as soon thereafter as it can be reached in the regular call of the docket, unless on cause shown, the court shall postpone or continue such case.

§ 949. Priority of cases in which a state is a party.—When a state is a party, or the execution of the revenue laws of a state is enjoined or stayed, in any suit in a court of the United States, such state, or the party claiming under the revenue laws of a state, the execution whereof is enjoined or stayed, shall be entitled, on showing sufficient reason, to have the cause heard at any time after it is docketed, in preference to any civil causes pending in such court between private parties.

§ 950. Notice of case for trial.—In all civil actions in the courts of the United States either party may notice the same for trial.

Printed Dockets.

9. The clerk, ten days before the first day of each term, or as soon after as practicable, shall cause to be printed a docket of all the causes then pending, stating the name of only one of each party, with an &c., if there are more than one, and stating the days on which the several cases stand for trial, and send as soon as practicable a copy of the same to the leading attorney or counsel of each party, when such attorney or counsel is known to the clerk; the costs of such copies to be taxed as costs in the cause.

Papers and Copies.

10. During vacation no record or paper shall be removed from the clerk's office, without leave of the court. But this rule does not apply to a master in chancery, or other person, to whom a reference has been made.

In all actions at law and in equity the clerk shall make out and deliver to the adverse party, if he requests it, a copy of all the pleadings and exhibits filed with the pleadings in the cause; and the fees paid for such copies shall be taxed with the costs of the cause in favor of the party paying for them.

§ 1033. Copy of indictment, etc., delivered to prisoner.—When any person is indicted for treason, a copy of the indictment and a list of the jury, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each juror and witness, shall be de-

livered to him at least three entire days before he is tried for the same. When any person is indicted for any other capital offense, such copy of the indictment and list of the jurors and witnesses shall be delivered to him at least two entire days before the trial.

11. Rule 10 of this court is so amended as to provide, that no paper or record shall be taken from the custody of the clerk without the special order of the court, and the clerk is required to enforce the rule so amended. **Adopted May 24, 1872. Amendment of Rule 10.**

12. It is ordered by the court, that in all cases at law, and in equity and admiralty, whenever a pleading is filed, there shall be filed with it a copy for the use of the opposite party, who shall be entitled to such copy on receipting therefor on the original paper. This rule does not apply to exhibits. The existing rule as to papers will be strictly enforced. **Adopted Nov. 14, 1872. Copies for adverse parties.**

13. The statutes of the state in relation to evidence oral and written, including the mode of its production and inspection, and the competency and credibility of witnesses, are adopted by this court. **Evidence and Witnesses.**

No attorney of record in any case pending in this court shall be entitled to mileage and *per diem* compensation as a witness in such case, unless by special order of the court. No witness shall be allowed for his attendance and mileage in more than two cases at the same time. **Fees and Mileage.**

When attachments are issued against witnesses for contempt, returnable at a subsequent term, the marshal shall take bail in the sum of fifty dollars for each witness so attached. **Attachments for Witnesses.**

No witness residing out of the county of Marion, who shall demand his fees at the time he is subpœnaed, shall be liable to attachment for not obeying the writ, unless such fees, to the amount of his mileage and one day's attendance shall be tendered him at the time he is summoned. **Tender of Fees.**

§ 724. Power to order production of books and writings in actions at law.—In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue, in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chan-

cery. If a plaintiff fails to comply with such order, the court may, on motion, give the like judgment for the defendant as in cases of nonsuit; and if a defendant fails to comply with such order, the court may, on motion, give judgment against him by default.

§ 858. No witness excluded on account of color or interest.—In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried: *Provided*, That in actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other as to any transaction with or statement by the testator, intestate, or ward, unless called to testify thereto by the opposite party or required to testify thereto by the court. In all other respects the laws of the state in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty.

20 Stats. at Large, 30. **Defendants in criminal cases competent witnesses.**—That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors in the United States courts, territorial courts, and courts-martial, and courts of inquiry, in any state or territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.

§ 861. Mode of proof in common-law actions.—The mode of proof in the trial of actions at common law shall be by oral testimony and examination of witnesses in open court, except as hereinafter provided.

§ 862. Mode of proof in equity and admiralty causes.—The mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to rules now or hereafter prescribed by the supreme court, except as herein specially provided.

§ 876. Subpoenas for witnesses to run into another district.—Subpœnas for witnesses who are required to attend a court of the United States, in any district, may run into any other district: *Provided*, That in civil causes the witnesses living out of the district in which the court is held do not live at a greater distance than one hundred miles from the place of holding the same.

§ 877. Witnesses—Form of a subpoena — Attendance.—Witnesses who are required to attend any term of a circuit or district court on the part of the United States shall be subpœnaed to attend to testify generally on their behalf, and not to depart the court without leave thereof, or of the district attorney; and under such process they shall appear before the grand or petit jury, or both, as they may be required by the court or district attorney.

§ 878. Witnesses in behalf of indigent defendants in criminal cases.—Whenever any person indicted in a court of the United States makes affidavit, setting forth that there are witnesses whose evidence is material to his defense; that he can not safely go to trial without them; what he expects to prove by each of them: that they are within the district in which the court is held, or within one hundred miles of the place of trial; and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses,

the court in term, or any judge thereof in vacation, may order that such witnesses be subpœnaed if found within the limits aforesaid. In such case the costs incurred by the process and the fees of the witnesses shall be paid in the same manner that similar costs and fees are paid in case of witnesses subpœnaed in behalf of the United States.

§ 879. **Recognizance of witnesses at the hearing of charges in criminal cases.**—Any judge or other officer who may be authorized to arrest and imprison or bail persons charged with any crime or offense against the United States may, at the hearing of any such charge, require of any witness produced against the prisoner, on pain of imprisonment, a recognizance, with or without sureties, in his discretion, for his appearance to testify in the case. And where the crime or offense is charged to have been committed on the high seas, or elsewhere within the admiralty and maritime jurisdiction of the United States, he may, in his discretion, require a like recognizance, with such sureties as he may deem necessary, of any witness produced in behalf of the accused, whose testimony in his opinion is important, and is in danger of being otherwise lost.

§ 881. **Recognizance of witnesses required at any time on application of district attorney.**—Any judge of the United States, on the application of a district attorney, and on being satisfied by proof that the testimony of any person is competent and will be necessary on the trial of any criminal proceeding in which the United States are parties or are interested, may compel such person to give recognizance, with or without sureties, at his discretion, to appear to testify therein; and, for that purpose, may issue a warrant against such person, under his hand, with or without seal, directed to the marshal or other officer authorized to execute process in behalf of the United States, to arrest and bring before him such person. If the person so arrested neglects or refuses to give recognizance in the manner required, the judge may issue a warrant of commitment against him, and the officer shall convey him to the prison mentioned therein. And the said person shall remain in confinement until he is removed to the court for the purpose of giving his testimony, or until he gives the recognizance required by said judge.

§ 1034. **Counsel and witnesses for defendant.**—Every person who is indicted for treason or other capital crime shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, and they shall have free access to him at all seasonable hours. He shall be allowed in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial as is usually granted to compel witnesses to appear on behalf of the prosecution.

14. In civil actions at law, depositions may be taken either under the provisions of the act of congress, or according to the mode pointed out in the fourteenth article of the code of civil procedure of the state of Indiana, passed June 18, 1852: *Provided,* The witness resides more than one hundred

Depositions.

miles from the city of Indianapolis, or is for any cause unable to attend the court, or is about to remove from the state, or to go abroad before the time set for trial, so that his personal attendance at the trial can not be procured.

Objections to Depositions.

All objections to depositions, which appear on the face thereof, or are known to the party objecting, shall be made in writing before the trial.

§ 863. **Depositions de bene esse.**—The testimony of any witness may be taken in any civil cause depending in a district or circuit court by deposition *de bene esse*, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any commissioner of a circuit court, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases *in rem*, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such deposition as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

§ 864. **Mode of taking depositions de bene esse.**—Every person deposing, as provided in the preceding section, shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.

§ 865. **Transmission to the court of depositions de bene esse.**—Every deposition taken under the two preceding sections shall be retained by the magistrate taking it until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate or the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in

court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and appear at court, such deposition shall not be used in the cause.

§ 866. Depositions under a dedimus potestatem and in perpetuam, etc.—In any case where it is necessary, in order to prevent a failure or delay of justice, any of the courts of the United States may grant a *dedimus potestatem* to take depositions according to common usage; and any circuit court, upon application to it as a court of equity, may, according to the usages of chancery, direct depositions to be taken in *perpetuam rei memoriam*, if they relate to any matters that may be cognizable in any court of the United States. And the provisions of sections eight hundred and sixty-three, eight hundred and sixty-four and eight hundred and sixty-five shall not apply to any deposition to be taken under the authority of this section.

§ 867. Depositions in perpetuam, etc., admissible at discretion of the court.—Any court of the United States may, in its discretion, admit in evidence in any cause before it any deposition taken *in perpetuam rei memoriam*, which would be so admissible in a court of the state wherein such cause is pending, according to the laws thereof.

§ 868. Depositions under a dedimus potestatem, how taken.—When a commission is issued by any court of the United States for taking the testimony of a witness named therein at any place within any district or territory, the clerk of any court of the United States for such district or territory shall, on the application of either party to the suit, or of his agent, issue a subpœna for such witness, commanding him to appear and testify before the commissioner named in the commission, at a time and place stated in the subpœna; and if any witness, after being duly served with such subpœna, refuses or neglects to appear, or, after appearing, refuses to testify, not being privileged from giving testimony, and such refusal or neglect is proven to the satisfaction of any judge of the court whose clerk issues such subpœna, such judge may proceed to enforce obedience to the process, or punish the disobedience, as any court of the United States may proceed in case of disobedience to process of subpœna to testify issued by such court.

§ 869. Subpœna duces tecum under a dedimus potestatem.—When either party in such suit applies to any judge of a United States court in such district or territory for a subpœna commanding a witness, therein to be named, to appear and testify before said commissioner, at the time and place to be stated in the subpœna, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpœna, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpœna accordingly. And if the witness, after being served with such subpœna, fails to produce to the commissioner, at the time and place stated in the subpœna, any such pa-

per, writing, written instrument, book, or other document, being in his possession or power, and described in the subpœna, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpœna, or punish the disobedience in like manner as any court of the United States may proceed in case of disobedience to like process issued by such court. When any such paper, writing, written instrument, book, or other document is produced to such commissioner, he shall, at the cost of the party requiring the same, cause to be made a correct copy thereof, or of so much thereof as shall be required by either of the parties.

§ 870. **Witness under a dedimus potestatem.**—No witness shall be required, under the provisions of either of the two preceding sections, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpœna directed to him by virtue of either of the said sections, unless his fee for going to, returning from, and one day's attendance at the place of examination are paid or tendered to him at the time of the service of the subpœna.

§ 875. **Letters rogatory from United States courts.**—When any commission or letter rogatory, issued to take the testimony of any witness in a foreign country, in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same the said minister or consul shall indorse thereon a certificate, stating when and where the same was received, and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the government. And the testimony of witnesses so taken and returned shall be read as evidence on the trial of the suit in which it was taken, without objection as to the method of returning the same.

19 **Stats. at Large, 241. Letters rogatory from foreign courts.**—When letters rogatory are addressed from any court of a foreign country to any circuit court of the United States, a commissioner of such circuit court designated by such court to make the examination of the witnesses mentioned in said letters shall have power to compel the witness to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts.

19 **Stats. at Large, 206. Depositions taken by notaries.**—That notaries public of the several states, territories, and the District of Columbia be, and they are hereby authorized to take depositions, and do all other acts in relation to taking testimony to be used in the courts of the United States, take acknowledgments and affidavits, in the same manner and with the same effect as commissioners of the United States circuit courts may now lawfully take or do.

27 **Stats. at Large, 7. Depositions under state laws.**— * * * In addition to the mode of taking the depositions of witnesses in causes pending at law or equity in the district and circuit courts of the United States, it shall be lawful to take the depositions or testimony of witnesses in the mode prescribed by the laws of the state in which the courts are held.

15. Previous to the close of each term of the court, an order shall be entered for the summoning of such number of grand and petit jurors for the ensuing term as the court may think necessary. **Rescinded by Rule 16.**

At least thirty days previous to the commencement of the next term, the clerk and marshal shall deposit in a box, on separate slips of paper, the names of one hundred men, residents of the district and having the qualifications prescribed for jurors in the state courts, from which they shall draw the number of names specified in the order of the court for grand and petit jurors who shall be summoned to serve as such jurors. The clerk shall issue a summons to such persons so selected, which shall be served by the marshal, and may be sent by mail, and the persons thus served shall return the summons by mail to the marshal, with a written acknowledgment of service signed by them.

When the regular panel of grand or petit jurors shall not be full, the deficiency may be supplied by talesmen, or by a special *venire,* to be ordered by the court.

Every petit juror in attendance upon the court shall be present during the session of the court, unless specially excused; and if he shall be absent at any time when he shall be called, without leave of the court, he shall not be paid for that day's service.

No member of the bar shall be placed upon the grand or petit juries of this court.

16. Ordered that rule No. 15 be and the same is hereby rescinded, and that the following be, and the same is hereby substituted therefor: **Adopted May 20, 1881.**

Previous to the close of each term of the court an order shall be entered for the summoning of such number of grand and petit jurors for the ensuing term as the court may think necessary, and they shall be drawn at least thirty days previous to the commencement thereof, in the manner prescribed by the Revised Statutes of the United States. The clerk shall thereupon issue a venire to the marshal for the persons so drawn, which shall be served and returned by him as similar process is served and returned by sheriffs under the laws of the state. **Juries.** **Venire.**

Every petit juror in attendance upon the court shall be present during the session of the court unless specially excused; and if he shall be absent at any time when he shall be called, without leave of the court, he shall not be paid for that day's service.

Absent Petit Jurors.

Members of the Bar. No member of the bar shall be placed upon the grand or petit juries of this court.

§ 566. Trial of issues of fact.—The trial of issues of fact in the district courts, in all causes except cases in equity and cases of admiralty and maritime jurisdiction, and except as otherwise provided in proceeding in bankruptcy, shall be by jury. In causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upwards, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different states and territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either party requires it.

§ 648. Issues of fact, when to be tried by jury.—The trial of issues of fact in the circuit courts shall be by jury, except in cases of equity and of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, and by the next section.

§ 649. Issues of fact tried by the court.—Issues of fact in civil cases in any circuit court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury.

§ 700. Cases tried by the circuit court without the intervention of a jury.—When an issue of fact in any civil cause in a circuit court is tried and determined by the court without the intervention of a jury, according to section six hundred and forty-nine, the rulings of the court in the progress of the trial of the cause, if excepted to at the time and duly presented by a bill of exceptions, may be reviewed by the supreme court upon a writ of error or upon appeal; and when the finding is special the review may extend to the determination of the sufficiency of the facts found to support the judgment.

18 Stats. at Large, 315. In admiralty cases circuit courts to find facts and law separately. When jury may try issues of fact. Review by supreme court. In patent cases circuit courts may submit questions of fact to jury. When act takes effect. — * * The circuit courts of the United States, in deciding cases of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately.

And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time,

impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law.

And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law.

The review of the judgments and decrees entered upon such findings by the supreme court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the circuit court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.

Said courts, when sitting in equity for the trial of patent causes, may impanel a jury of not less than five and not more than twelve persons, subject to such general rules in the premises as may, from time to time, be made by the supreme court, and submit to them such questions of fact arising in such cause as such circuit court shall deem expedient.

And the verdict of such jury shall be treated and proceeded upon in the same manner and with the same effect as in the case of issues sent from chancery to a court of law and returned with such findings.

This act shall take effect on the first day of May, eighteen hundred and seventy-five.

§ 800. **Jurors, qualifications and selection of.**—Jurors to serve in the courts of the United States, in each state respectively, shall have the same qualifications, subject to the provisions hereinafter contained, and be entitled to the same exemptions, as jurors of the highest court of law in such state may have and be entitled to at the time when such jurors for service in the courts of the United States are summoned; and they shall be designated by ballot, lot, or otherwise, according to the mode of forming such juries then practiced in such state court, so far as such mode may be practicable by the courts of the United States or the officers thereof. And for this purpose the said courts may, by rule or order, conform the designation and impaneling of juries, in substance, to the laws and usages relating to jurors in the state courts from time to time in force in such state.

18 Stats. at Large, 335. **Race or color not to exclude.**—That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

21 Stats. at Large, 43. **Jurors, how drawn, qualifications.**—And that all such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in section eight hundred of the Revised Statutes, which names shall have been placed therein by the clerk of such court and a commissioner, to be appointed by the judge thereof, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal

political party in the district in which the court is held opposing that to which the clerk may belong, the clerk and said commissioner each to place one name in said box alternately, without reference to party affiliations, until the whole number required shall be placed therein. But nothing herein contained shall be construed to prevent any judge from ordering the names of jurors to be drawn from the boxes used by the state authorities in selecting jurors in the highest courts of the state.

And no person shall serve as a petit juror more than one term in any one year, and all juries to serve in courts after the passage of this act shall be drawn in conformity herewith: *Provided*, That no citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States on account of race, color, or previous condition of servitude.

§ 802. **Jurors, how apportioned.**—Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly to burden the citizens of any part of the district with such services.

§ 803. **Venire, how issued and served.**—Writs of venire facias, when directed by the court, shall issue from the clerk's office, and shall be served and returned by the marshal in person, or by his deputy; or, in case the marshal or his deputy is not an indifferent person, or is interested in the event of the cause, by such fit person as may be specially appointed for that purpose by the court, who shall administer to him an oath that he will truly and impartially serve and return the writ.

§ 804. **Talesmen for petit juries.**—When, from challenges or otherwise, there is not a petit jury to determine any civil or criminal cause, the marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel; and when the marshal or his deputy is disqualified as aforesaid, jurors may be so returned by such disinterested person as the court may appoint, and such person shall be sworn, as provided in the preceding section.

§ 805. **Special juries.**—When special juries are ordered in any circuit court, they shall be returned by the marshal in the same manner and form as is required in such cases by the laws of the several states.

§ 808. **Number of grand jurors.**—Every grand jury impaneled before any district or circuit court shall consist of not less than sixteen nor more than twenty-three persons. If of the persons summoned less than sixteen attend, they shall be placed on the grand jury, and the court shall order the marshal to summon, either immediately or for a day fixed, from the body of the district, and not from the bystanders, a sufficient number of persons to complete the grand jury. And whenever a challenge to a grand juror is allowed, and there are not in attendance other jurors sufficient to complete the grand jury, the court shall make a like order to the marshal to summon a sufficient number of persons for that purpose.

§ 809. **Foreman of grand jury.**—From the persons summoned and accepted as grand jurors, the court shall appoint the foreman, who shall have power to administer oaths and affirmations to witnesses appearing before the grand jury.

§ 810. **Grand juries, when summoned.**—No grand juries shall be summoned to attend any circuit or

district court unless one of the judges of such circuit court, or the judge of such district, in his own discretion, or upon a notification by the district attorney that such jury will be needed, orders a venire to issue therefor. And either of the said courts may in term order a grand jury to be summoned at such time and to serve such time as it may direct, whenever in its judgment it may be proper to do so. But nothing herein shall operate to extend beyond the time permitted by law the imprisonment before indictment found of a person accused of a crime or offense, or the time during which a person so accused may be held under recognizance before indictment found.

§ 811. **Discharge of grand juries.**—The circuit and district courts, the district courts of the territories, and the supreme court of the District of Columbia, may discharge their grand juries whenever they deem a continuance of the sessions of such juries unnecessary.

§ 812. **Jurors not to be summoned oftener than once in two years.**—No person shall be summoned as a juror in any circuit or district court more than once in two years, and it shall be sufficient cause of challenge to any juror called to be sworn in any cause that he has been summoned and attended said court as a juror at any term of said court held within two years prior to the time of such challenge.

§ 813. **Grand juries of district courts may act in cases cognizable in circuit court.**—The grand jury impaneled and sworn in any district court may take cognizance of all crimes and offenses within the jurisdiction of the circuit court for said district as well as of said district court.

§ 815. **Juries in Kentucky and Indiana.**—In the several districts of Kentucky and Indiana, such number of jurors shall be summoned by the marshal at every term of the circuit and district courts, respectively, as may have been ordered of record at the previous term; and in case there is not a sufficient number of jurors in attendance at any time, the court may order such number to be summoned as, in its judgment, may be necessary to transact the business of the court. And a grand jury may be summoned to attend every term of the circuit or district court by order of the court. The marshal may summon juries and talesmen in case of a deficiency, pursuant to an order of the court made during the term, and they shall serve for such time as the court may direct.

§ 819. **Challenges.**—When the offense charged is treason or a capital offense, the defendant shall be entitled to twenty and the United States to five peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to three peremptory challenges; and in all other cases, civil and criminal, each party shall be entitled to three peremptory challenges; and in all cases where there are several defendants or several plaintiffs, the parties on each side shall be deemed a single party for the purposes of all challenges under this section. All challenges, whether to the array or panel, or to individual jurors for cause or favor, shall be tried by the court without the aid of triers.

§ 822. **Grand and petit jurors.**—No person shall be a grand or petit juror in any court of the United States, upon any inquiry, hearing, or trial of any suit, proceeding, or prosecution based upon or arising under the provisions of title "Civil Rights" and of title "Crimes," for enforcing the provisions of the fourteenth amendment to the constitution, who is, in the

judgment of the court, in complicity with any combination or conspiracy in said titles set forth; and every grand and petit juror shall, before entering upon any such inquiry, hearing, or trial, take and subscribe an oath, in open court, that he has never, directly or indirectly, counseled, advised, or voluntarily aided any such combination or conspiracy.

§ 961. **Judgment for sum due in equity on bonds, etc.**—In all suits brought to recover the forfeiture annexed to any article of agreement, covenant, bond, or other specialty where the forfeiture, breach, or nonperformance appears by the default or confession of the defendant, or upon demurrer, the court shall render judgment for the plaintiff to recover so much as is due according to equity. And when the sum for which judgment should be rendered is uncertain, it shall, if either of the parties request it, be assessed by a jury.

§ 1021. **Indictments.**—No indictment shall be found, nor shall any presentment be made without the concurrence of at least twelve grand jurors.

§ 1025. **Indictments, defect of form.**—No indictments found and presented by a grand jury in any district or circuit or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

§ 1031. **Peremptory challenges.**—If in the trial of a capital offense the party indicted peremptorily challenges jurors above the number allowed him by law, such excess of challenges shall be disallowed by the court, and the cause shall proceed for trial in the same manner as if they had not been made.

25 Stats. at Large, 386. **Juries of circuit and district courts may be used interchangeably.**—That the act of congress approved June thirtieth, eighteen hundred and seventy-nine, chapter fifty-two, section two, be, and the same is hereby, amended, so that whenever any circuit and district court of the United States shall be held at the same time and place they shall be authorized and required, if the business of the courts will permit, to use interchangeably the juries in either court drawn according to the provisions of this act.

§ 4301. **Jury in summary trials under navigation laws.**—At the summary trial of offenses against the laws for the protection of persons or property engaged in commerce or navigation, it shall not be necessary that the accused shall have been previously indicted, but a statement of complaint, verified by oath in writing, shall be presented to the court setting out the offense in such manner as clearly to apprise the accused of the character of the offense complained of, and to enable him to answer the complaint. The complaint or statement shall be read to the accused, who may plead to or answer the same, or make a counter-statement. The trial shall thereupon be proceeded with in a summary manner, and the case shall be decided by the court, unless, at the time for pleading or answering, the accused shall demand a jury, in which case the trial shall be upon the complaint and plea of not guilty.

§ 4303. **Challenges in summary cases.**—At the trial in summary cases, if by jury, the United States and the accused shall each be entitled to three peremptory challenges. Challenges for cause, in such cases, shall be tried by the court without the aid of triers.

17. That part of article 5 of 2d Revised Statutes (of Indiana), 1852, from section 94 to 100, inclusive, is adopted as the law of this court. **Variances and Amendments.**

§ 954. **Defects of form—Amendments.**—No summons, writ declaration, return, process, judgment, or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed, or reversed for any defect or want of form; but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect, or want of form, except those which, in cases of demurrer, the party demurring specially sets down, together with his demurrer, as the cause thereof; and such court shall amend every such defect and want of form, other than those which the party demurring so expresses; and may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules, prescribe.

18. The clerk of this court shall receive any moneys presented or sent to him to be applied on any judgment in this court, and pay out the same to the party or parties entitled to receive it, or to the attorney or attorneys of record, taking receipt for the same—without any further order of court, except in cases falling under the act of congress of March 24, 1871, or where the court may have ordered otherwise. The clerk shall tax his per cent. in the costs of the case. **Payment of Money and its Deposit.**

In cases where money is paid into court, any party interested may move for an order that the clerk deposit the same under the direction of the court. On deposits so made, the clerk shall account for such interest as he may have collected on the fund. But without such order he shall not be required to account for interest. **Interest on Deposits.**

It is ordered by the court that the national banks of Indianapolis be, and the same hereby are, selected as the depositaries for this court, according to the acts of congress in such case made and provided. **National Banks of Indianapolis.**

§ 995. **Moneys paid into court.**—All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the treasurer, an assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court: *Provided*, That nothing herein shall be construed to prevent the delivery of any such money upon security according to agreement of parties, under the direction of the court.

§ 996. **Moneys deposited, how with-**

drawn.—No money deposited as aforesaid shall be withdrawn except by order of the judge or judges of said courts respectively, in term or in vacation, to be signed by such judge or judges, and to be entered and certified of record by the clerk; and every such order shall state the cause in or on account of which it is drawn.

§ 5153. Designation of depositaries by secretary of the treasury, security for deposits.—All national banking associations, designated for that purpose by the secretary of the treasury, shall be depositaries of public money, except receipts from customs under such regulations as may be prescribed by the secretary; and they may also be employed as financial agents of the government; * * * the secretary of the treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the government.

Depositary at Evansville.

19. Ordered by the court that the German National Bank of Evansville be appointed one of the depositaries of this court.

Offers to Confess Judgment.

20. The defendant may at any time before the trial serve upon the plaintiff an offer in writing to allow judgment to be taken against him for the sum, or property, or to the effect therein specified, with costs. If the plaintiff accept the offer in court, in the presence of the defendant, or give notice of acceptance within five days, and, before trial, judgment shall be entered accordingly. If the offer is not accepted, or notice of acceptance be not given, as above directed, the offer is to be deemed withdrawn, and shall not be given in evidence or commented on before the jury; and if the plaintiff fail to obtain a more favorable judgment, the defendant shall recover from the plaintiff the costs occasioned subsequent to the time of the offer.

Attachment.

21. The ninth article of the Indiana Code of Civil Procedure, passed June 18, 1852, touching attachment proceedings, is, so far as the same is applicable, adopted as the rule of this court in actions at law where the summons is duly served on the defendant or defendants.

§ 646. Attachments, injunctions, and indemnity bonds to remain in force after removal.—When a suit is removed for trial from a state court to a circuit court, as provided in the foregoing sections, any attachment of the goods or estate of the defendant by the original process shall hold the same to answer the final judgment, in the same manner as by the laws of such state they would have been held to answer final judgment had it been rendered by the court in which the suit was commenced; and any injunc-

tion granted before the removal of the cause against the defendant applying for its removal shall continue in force until modified or dissolved by the United States court into which the cause is removed; and any bond of indemnity or other obligation given by the plaintiff upon the issuing or granting of any attachment, writ of injunction, or other restraining process, against the defendant petitioning for the removal of the cause, shall also continue in full force and may be prosecuted by the defendant and made available for his indemnity in case the attachment, injunction, or other restraining process be set aside or dissolved, or judgment be rendered in his favor, in the same manner and with the same effect as if such attachment, injunction, or other restraining process had been granted, and such bond had been originally filed or given in such state court.

§ 18 Stats. at Large, 470. **Process, not affected by.**—That when any suit shall be removed from a state court to a circuit court of the United States, any attachment or sequestration of the goods or estate of the defendant, had in such suit in the state court shall hold the goods or estate so attached or sequestered to answer the final judgment or decree in the same manner as by law they would have been held to answer final judgment or decree had it been rendered by the court in which suit was commenced; and all bonds, undertakings, or security given by either party in such suit prior to its removal shall remain valid and effectual notwithstanding said removal; and all injunctions, orders and other proceedings had in such suit prior to its removal shall remain in full force and effect until dissolved or modified by the court to which such suit shall be removed.

§ 915. **Attachments.**—In common-law causes in the circuit and district courts the plaintiff shall be entitled to similar remedies, by attachment or other process, against the property of the defendant, which are now provided by the laws of the state in which such court is held for the courts thereof; and such circuit or district courts may from time to time, by general rules, adopt such state laws as may be in force in the states where they are held in relation to attachment and other process: *Provided*, That similar preliminary affidavits or proofs, and similar security, as required by such state laws, shall be first furnished by the party seeking such attachment or other remedy.

§ 924. **Attachment in postal suits.**—In all cases where debts are due from defaulting or delinquent postmasters, contractors, or other officers, agents or employes of the postoffice department, a warrant of attachment may issue against all real and personal property, and legal and equitable rights belonging to such officer, agent or employe, and his sureties, or either of them, in the following cases:

First. When such officer, agent, or employe, and his sureties or either of them, is a non-resident of the district where such officer, agent or employe was appointed, or has departed from such district for the purpose of permanently residing out of the same, or of defrauding the United States, or of avoiding the service of civil process.

Second. When such officer, agent, or employe, and his sureties, or either of them has conveyed away, or is about to convey away his property or any part thereof, or has removed or is about to remove the same, or any part thereof, from the district where-

in it is situate, with intent to defraud the United States.

And when any such property has been removed, certified copies of the warrant may be sent to the marshal of the district into which the same has been removed, under which certified copies he may seize said property and convey it to some convenient point within the jurisdiction of the court from which the warrant originally issued. And alias warrants may be issued in such cases upon due application, and the validity of the warrant first issued shall continue until the return day thereof.

§ 925. **Application for warrant.**—Application for such warrant of attachment may be made by any district or assistant district attorney, or any other person authorized by the postmaster-general, before the judge, or, in his absence, before the clerk of any court of the United States having original jurisdiction of the cause of action. And such application shall be made upon an affidavit of the applicant, or of some other credible person, stating the existence of either of the grounds of attachment enumerated in the preceding section, and upon production of legal evidence of the debt.

§ 926. **Issuing warrant—Duty of clerk and marshal.**—Upon any such application, and upon due order of any judge of the court, or, in his absence, without such order, the clerk shall issue a warrant for the attachment of all the property of any kind belonging to the person specified in the affidavit, which warrant shall be executed with all possible dispatch by the marshal, who shall take the property attached, if personal, into his custody, and hold the same subject to all interlocutory or final orders of the court.

§ 927. **Ownership of attached property—Trial—Other remedies.**—At any time within twenty days before the return day of such warrant, the party whose property is attached may, on giving notice to the district attorney of his intention, file a plea in abatement, traversing the allegations of the affidavit, or denying the ownership of the property attached to be in the defendants or either of them; in which case the court may, upon application of either party, order an immediate trial by jury of the issues raised by the affidavit and plea; but the parties may, by consent, waive a trial by jury, in which case the court shall decide the issues raised. And any party claiming ownership of the property attached, and a specific return thereof, shall be confined to the remedy herein afforded; but his right to an action of trespass, or other action for damages, shall not be impaired hereby.

§ 928. **Proceeds of attached property to be invested.**—When the property attached is sold on any interlocutory order of the court or is producing any revenue, the money arising from such sale or revenue shall be invested in securities of the United States, under the order of the court, and all accretions shall be held subject to the orders of the same.

§ 929. **Publication of attachment.**—Immediately upon the execution of any such warrant of attachment, the marshal shall cause due publication thereof to be made, in the case of absconding debtors for two months, and of non-residents for four months. The publication shall be made in some newspaper published in the district where the property is situate, and the details thereof shall be regulated by the order under which the warrant is issued.

§ 930. **Persons having property of defendants to account for it—Sales void—Personal notice.**—After the first publication of such notice of attach-

ment as required by law, every person indebted to or having possession of any property belonging to the said defendants, or either of them, and having knowledge of such notice, shall account and answer for the amount of such debt and the value of such property; and any disposal, or attempt to dispose of any such property, to the injury of the United States, shall be illegal and void. And when the person indebted to, or having possession of the property of such defendants, or either of them, is known to the district attorney or marshal, such officer shall see that personal notice of the attachment is served upon such person, but the want of such notice shall not invalidate the attachment.

§ 931. **Discharge of attachment—Bond.**—Upon application of the party whose property has been attached, the court, or any judge thereof, may discharge the warrant of attachment as to the property of the applicant, provided such applicant shall execute to the United States a good and sufficient penal bond, in double the value of the property attached, to be approved by a judge of the court, and with condition for the return of said property, or to answer any judgment which may be rendered by the court in the premises.

§ 932. **Accrued rights not to be abridged.**—Nothing contained in the preceding eight sections shall be construed to limit or abridge, in any manner, such rights of the United States as have accrued or been allowed in any district under the former practice of, or the adoption of state laws by, the United States courts.

§ 933. **Attachments dissolved in conformity with state laws.**—An attachment of property, upon process instituted in any court in the United States, to satisfy such judgment as may be recovered by the plaintiff therein, except in the cases mentioned in the preceding nine sections, shall be dissolved when any contingency occurs by which, according to the laws of the state where said court is held, such attachment would be dissolved upon like process instituted in the courts of said state: *Provided*, That nothing herein contained shall interfere with any priority of the United States in the payment of debts.

§ 935. **Garnishees in suits by the United States, on notes, etc.**—In any suit by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees; and it shall be the duty of any person so summoned to appear in open court and to depose, in writing, to the amount which he was indebted to the said corporation at the time of the service of the summons and at the time of making such deposition; and judgment may be entered in favor of the United States for the sum admitted by such garnishee to be due to the said corporation, in the same manner as if it had been due to the United States: *Provided*, That no judgment shall be entered against any garnishee until after judgment has been rendered against the corporation defendant to the said action, or until the sum in which the garnishee stands indebted is actually due.

§ 936. **Issue tendered when garnishee denies indebtedness.**—When any person summoned as garnishee deposes in open court that he is not, and was not at the time of the service of the summons, indebted to such corporation, an issue may be tendered by the United States upon such demand, and if, upon the trial of that issue, a verdict is rendered against

the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs of suit.

§ 937. Garnishee failing to appear.—If any person summoned as garnishee, as aforesaid, fails to appear at the term of the court to which he is summoned, he shall be subject to attachment for contempt of the court.

Set-off.

22. So much of the statute of the State of Indiana entitled an act to revise, simplify and abridge the rules, practice, pleadings and forms in civil causes in the courts of this state, to abolish distinct forms of action at law, and to provide for the administration of justice in a uniform mode of pleading and practice, without distinction between law and equity, approved June 18, 1852, as relates to the subject of set-off, is hereby adopted as the rule of this court.

§ 951. Suits of United States against individuals, what credits allowed.—In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the treasury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the treasury by absence from the United States, or by some unavoidable accident.

§ 952. In suits under postal laws, what credits allowed.—No claim for a credit shall be allowed upon the trial of any suit for delinquency against a postmaster, contractor, or other officer, agent, or employe of the postoffice department, unless the same has been presented to the sixth auditor and by him disallowed, in whole or in part, or unless it is proved to the satisfaction of the court that the defendant is, at the time of trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting to the said auditor a claim for such credit by some unavoidable accident.

Real Property, etc.

23. Articles 29 and 30, of chapter 1, part 2d, of volume 2, Revised Code of Indiana, adopted in 1852, relating to the recovery of real property, and to determine conflicting claims thereto, and the amendment thereto, Acts 1855, page 57, and the article relating to occupying claimants, are adopted as the law of this court.

Nothing in this rule shall be so construed as to confound the common law and equity practice in this court. If the proceeding in the state court on a cause of this nature is brought for both legal and equitable relief, the plaintiff shall elect for which remedy he will proceed; or he may, sub-

Legal and Equitable Relief.

ject to the rules of law and equity, proceed for both, by filing his bill and declaration to be docketed as separate causes.

24. When any cause is pending in this court at common law, in equity, or in admiralty, and is ready for trial or hearing, the counsel of either party, on notice to the other, may apply to one of the judges of the court twenty days before the meeting of court at New Albany or Evansville, and if the judge shall be of the opinion that it is expedient that such cause be tried or heard at New Albany or Evansville, he shall order accordingly. And thereupon, witnesses may be subpœnaed at the place so fixed for hearing or trial. **Transfer of Causes.**

This rule shall apply to criminal cases on application of the district attorney or of the defendant.

The parties may also stipulate by writing filed with the clerk for the trial or hearing of any cause at New Albany or Evansville.

25. Ordered that Rule 24 of this court be so amended that causes from New Albany and Evansville may be transferred to the court at Indianapolis under the provisions of that rule. **Adopted Sept. 23, 1873. Amendment of Rule 24.**

And it is further ordered that a transfer may be made from any one of said courts to the other by the order of the judge, when, in his opinion, the transfer ought to be made, either in term or in vacation.

26. The clerk of this court shall make full and complete records in all causes, except in civil causes dismissed. And he shall make records, in short, in all civil causes dismissed. **Records.**

§ 750. **Final record.**—In equity and admiralty causes only the process, pleadings, and decree, and such orders and memorandums as may be necessary to show the jurisdiction of the court and regularity of the proceedings, shall be entered upon the final record.

27. In all cases taken from the district to the circuit court, by appeal or writ of error, it shall be the duty of the clerk to cause to be printed the record as filed in the circuit court, the costs of which shall, in the first instance, be paid by the appellant or plaintiff in error, but which shall be taxed by the clerk against the losing party. And if briefs or abstracts are furnished, they shall be printed at the cost of the party so furnishing them. **Printed Records and Briefs.**

26 Stats. at Large, 827. Appellate jurisdiction of circuit court transferred to supreme court or circuit court of appeals.—No appeal, whether by writ of error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, but all appeals by writ of error or otherwise, from said district courts shall only be subject to review in the supreme court of the United States, or in the circuit court of appeals hereby established, as is hereinafter provided, and the review, by appeal, by writ of error, or otherwise, from the existing circuit courts shall be had only in the supreme court of the United States or in the circuit courts of appeals hereby established according to the provisions of this act regulating the same.

Executions.

28. In relation to all executions to be hereafter issued upon judgments of this court, the 405th and 406th sections, and the 420th to the 473d sections, inclusive, of the first chapter of the second part of the second volume of the Revised Statutes of the State of Indiana, passed at the thirty-sixth session of the general assembly, are adopted as the rule of this court: *Provided,* That nothing in this rule shall require the marshal, in advertising sales of real estate, on execution, to post notices of sale in the township where any such real estate may be situated.

Sales.

Wherever the word "sheriff" occurs in any of said sections it shall, for the purpose of this rule, be read "marshal."

§ 716. Power to issue writs.—The supreme court and the circuit and district courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law.

§ 787. Duties of marshal.—It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein, and to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he shall have power to command all necessary assistance in the execution of his duty.

§ 788. Powers of marshals.—The marshals and their deputies shall have, in each state, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such state may have, by law, in executing the laws thereof.

§ 789. In case of death.—In the case of the death of any marshal, his deputy or deputies shall continue in office, unless otherwise specially removed, and shall execute the same in the name of the deceased, until another marshal is appointed, as provided in this chapter, and duly qualified. The defaults or misfeasances in office of such deputies in the meantime shall be adjudged a breach of the condition of the bond given by the marshal who appointed them; and the executor or administrator of the deceased marshal shall have like rem-

edy for the defaults and misfeasances in office of such deputies, during such interval, as he would be entitled to if the marshal had continued in life and in the exercise of his said office until his successor was appointed and duly qualified.

§ 790. **May execute process in their hands when removed.**—Every marshal or his deputy, when removed from office, or when the term for which the marshal is appointed expires, shall have power, notwithstanding, to execute all such precepts as may be in their hands respectively at the time of such removal or expiration of office; and the marshal shall be held responsible for the delivery to his successor of all prisoners who may be in his custody at the time of his removal, or when the term for which he is appointed expires; and for that purpose he may retain such prisoners in his custody until his successor is appointed and duly qualified.

§ 911. **Sealing and testing of writs.**—All writs and processes issuing from the courts of the United States shall be under the seal of the court from which they issue, and shall be signed by the clerk thereof. Those issuing from the supreme court or a circuit court shall bear teste of the chief justice of the United States, or, when that office is vacant, of the associate justice next in precedence, and those issuing from a district court shall bear teste of the judge, or, when that office is vacant, of the clerk thereof. The seals of the said courts shall be provided at the expense of the United States.

§ 912. **Teste of process, day of.**—All process issued from the courts of the United States shall bear teste from the day of such issue.

§ 916. **Execution in common-law causes.**—The party recovering a judgment in any common-law cause in any circuit or district court shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are now provided in like causes by the laws of the state in which such court is held, or by any such laws hereafter enacted which may be adopted by general rules of such circuit or district court; and such courts may, from time to time, by general rules, adopt such state laws as may hereafter be in force in such state in relation to remedies upon judgments, as aforesaid, by execution or otherwise.

§ 922. **When the marshal or his deputy is a party in a cause.**—When the marshal or his deputy is a party in any cause, the writs and precepts therein shall be directed to such disinterested person as the court or any justice or judge thereof may appoint, and the person so appointed may execute and return them.

§ 962. **Judgment for duties, etc.**—In all suits by the United States for the recovery of duties on imports, or of penalties for the non-payment thereof, the judgment shall recite that it is rendered for duties, and such judgment, with interest thereon, and costs, shall be payable in the coin by law receivable for duties; and the execution issued thereon shall set forth that the recovery is for duties, and shall require the marshal to satisfy the same in the coin by law receivable for duties; and in case of levy upon and sale of the property of the judgment debtor, the marshal shall refuse payment from any purchaser at such sale in any other money than that specified in the execution.

§ 966. **Interest on judgments.**—Interest shall be allowed on all judgments in civil causes, recovered in a circuit or district court, and may be levied by the marshal under process of execution issued thereon, in all

cases where by the law of the state in which such court is held, interest may be levied under process of execution on judgments recovered in the courts of such state; and it shall be calculated from the date of the judgment, at such rate as is allowed by law on judgments recovered in the courts of such state.

§ 985. **Executions to run in all the districts of the state.**—All writs of execution upon judgments or decrees obtained in a circuit or district court, in any state which is divided into two or more districts, may run and be executed in any part of such state; but shall be issued from, and made returnable to, the court wherein the judgment was obtained.

§ 986. **Executions in favor of U. S. to run in every state.**—All writs of execution upon judgments obtained for the use of the United States, in any court thereof, in one state, may run and be executed in any other state, or in any territory, but shall be issued from, and made returnable to, the court wherein the judgment was obtained.

§ 987. **Execution stayed on conditions.**—When a circuit court enters judgment in a civil action, either upon a verdict or on a finding of the court upon the facts, in cases where such finding is allowed, execution may, on motion of either party, at the discretion of the court, and on such conditions for the security of the adverse party as it may judge proper, be stayed forty-two days from the time of entering judgment, to give time to file in the clerk's office of said court a petition for a new trial. If such petition is filed within said term of forty-two days, with a certificate thereon from any judge or such court that he allows it to be filed, which certificate he may make or refuse at his discretion, execution shall, of course, be further stayed to the next session of said court. If a new trial be granted, the former judgment shall be thereby rendered void.

§ 988. **Judgment-debtor, continuance.**—In any state where judgments are liens upon the property of the defendant, and where, by the laws of such state, defendants are entitled, in the courts thereof, to a stay of execution for one term or more, defendants in actions in the courts of the United States, held therein, shall be entitled to a stay of execution for one term.

§ 989. **Execution against officers of revenue.**—When a recovery is had in any suit or proceeding against a collector or other officer of the revenue for any act done by him, or for the recovery of any money exacted by or paid to him, and by him paid into the treasury, in the performance of his official duty, and the court certifies that there was probable cause for the act done by the collector or other officer, or that he acted under the directions of the secretary of the treasury, or other proper officer of the government, no execution shall issue against such collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the treasury.

§ 990. **Imprisonment for debt.**—No person shall be imprisoned for debt in any state, on process issuing from a court of the United States, where, by the laws of such state, imprisonment for debt has been or shall be abolished. And all modifications, conditions and restrictions upon imprisonment for debt, provided by the laws of any state, shall be applicable to the process issuing from the courts of the United States to be executed therein; and the same course of proceedings shall be adopted therein as may be adopted in the courts of such state.

§ 991. **Discharge from arrest or im-**

prisonment.—When any person is arrested or imprisoned in any state on mesne process or execution issued from any court of the United States, in any civil action, he shall be entitled to discharge from such arrest or imprisonment in the same manner as if he were so arrested and imprisoned on like process from the courts of such state. The same oath may be taken, and the same notice thereof shall be required, as may be provided by the laws of such state, and the same course of proceedings shall be adopted as may be adopted in the courts thereof. But all such proceedings shall be had before any one of the commissioners of the circuit court for the district where the defendant is so held.

§ 993. **Goods taken on a fieri facias, how appraised.**—When it is required by the laws of any state that goods taken in execution on a writ of *fieri facias* shall be appraised before the sale thereof, the appraisers appointed under the authority of the state may appraise goods taken in execution on a *fieri facias* issued out of any court of the United States, in the same manner as if such writ had issued out of a court of such state. And the marshal in whose custody such goods may be shall summon the appraisers, in the same manner as the sheriff is, by the laws of such state, required to summon them; and if the appraisers, being duly summoned, fail to attend and perform the duties required of them, the marshal may proceed to sell such goods without an appraisement. When such appraisers attend they shall be entitled to the like fees as in case of appraisements under the laws of the state.

§ 994. **Death of marshal after levy or sale.**—When a marshal dies, or is removed from office, or the term of his commission expires, after he has taken in execution, under process from a court of the United States, any lands, tenements, or hereditaments, and before sale or other final disposition thereof, the like process shall issue to the succeeding marshal, and the same proceeding shall be had as if such marshal had not died or been removed, or the term of his commission had not expired. And when a marshal dies or is removed from office, or the term of his commission expires, after he has sold any lands, tenements, or hereditaments, under process from a court of the United States, and before a deed for the same is executed by him to the purchaser, such court may, on application by the purchaser, or by the plaintiff at whose suit the sale was made, setting forth the case and the reason why the title was not perfected by said marshal, order the marshal for the time being to perfect the title and execute a deed to the purchaser, upon his paying the purchase money and costs remaining unpaid.

§ 1007. **Supersedeas.**—In any case where a writ of error may be a *supersedeas* the defendant may obtain such *supersedeas* by serving a writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a *supersedeas*, execution shall not issue until the expiration of ten days.

§ 1012. **Appeals from circuit courts**

to supreme court.—Appeals from the circuit courts, and district courts acting as circuit courts, and from district courts in prize causes, shall be subject to the same rules, regulations, and restrictions as are or may be prescribed in law in cases of writs of error.

§ 1040. **Capital case carried to the supreme court.**—Whenever a judgment of death is rendered in any court of the United States, and the case is carried to the supreme court in pursuance of law, the court rendering such judgment shall, by its order, postpone the execution thereof from time to time and from term to term, until the mandate of the supreme court in the case is received and entered upon the records of such lower court. In case of affirmance by the supreme court, the court rendering the original judgment shall appoint a day for the execution thereof; and in case of reversal, such further proceedings shall be had in the lower court as the supreme court may direct.

§ 1041. **Judgments for fines, how collected.**—In all criminal or penal causes in which judgment or sentence has been or shall be rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, the said judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced: *Provided*, That where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid.

§ 1042. **Poor convicts sentenced and imprisoned for fines.**—When a poor convict, sentenced by any court of the United States to pay a fine or fine and cost, whether with or without imprisonment, has been confined in prison thirty days, solely for the nonpayment of such fine, or fine and cost, he may make application in writing to any commissioner of the United States court in the district where he is imprisoned, setting forth his inability to pay such fine, or fine and cost, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the commissioner shall proceed to hear and determine the matter; and if on examination it shall appear to him that such convict is unable to pay such fine, or fine and cost, and that he has not any property exceeding twenty dollars in value, except such as is by law exempt from being taken on execution for debt, the commissioner shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken on civil precept for debt by the laws of [state where oath is administered]; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." And thereupon such convict shall be discharged, the commissioner giving to the jailer or keeper of the jail a certificate setting forth the facts.

27 Stats. at Large, 751. **Sales of real and personal property, place of sale and notice of publication.**—All real estate or any interest in land sold under any order or decree of any United States court shall be sold at public sale at the court house of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or de-

cree of sale may direct. * * * All personal property sold under any order or decree of any court of the United States shall be sold as provided in the first section of this act, unless in the opinion of the court rendering such order or decree, it would be best to sell it in some other manner. * * * Hereafter no sale of real estate under any order, judgment, or decree of any United States court shall be had without previous publication of notices of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued and having a general circulation in the county and state where the real estate proposed to be sold is situated, if such there be. If said property shall be situated in more than one county or state, such notice shall be published in such of the counties where said property is situated, as the court may direct. Said notice shall, among other things, describe the real estate to be sold. The court may, in its discretion, direct the publication of the notice of sale herein provided for to be made in such other papers as may seem proper.

Appraisement Laws.

29. Upon any instrument in writing, made within this state or elsewhere, containing an agreement to pay money, without relief from valuation laws, judgment shall be rendered and execution had accordingly.

Proceedings in Aid of Executions.

30. Sections 518 to 524, inclusive, relating to "proceedings supplementary to execution," being all of article 23 of part second of the second volume of the Revised Statutes of the State of Indiana, passed in 1852, so far as the same may be applicable, are adopted as the law of this court.

Redemption of Land Sold on Execution.

31. All sales of real estate under judgments at law, or decrees in chancery, rendered in this court, are subject to the provisions of the act of the legislature of Indiana, approved June 4, 1861, giving the right of redemption in such cases. This rule to apply only to contracts made after the approval of said act.

Adopted Sept. 26, 1876. Sales by Master in Chancery.

32. Ordered, that in all sales made by the master in chancery under the order of the court, a commission of one and one-half per cent. on the amount of the sale be allowed the master making such sale, provided that in causes where the property, real or personal, or both, shall be sold for a sum exceeding $50,000, the court shall determine the amount of the commission according to the circumstances in the particular case. And in all cases where, after the court shall make an order for the sale of property, and the case shall be settled or compromised without sale, the master shall be allowed one-half the commission payable upon actual sale.

33. Ordered that hereafter in all cases in chancery, before the same shall be heard by the court, the pleadings shall be printed, and before they shall be heard on final hearing upon the merits, an abstract of the proofs shall be printed. And in case the counsel can not agree upon the abstract of the proofs, the court will, on application, appoint some fit person to make such abstract, the expense of such printing or abstract to be taxed as costs in the cause against the party adjudged to pay the same; but the court may, by special order obtained six days before the hearing, dispense with such printing, or abstract, or some parts thereof.

Adopted Sept. 6, 1879. Printed Records in Chancery Causes. Abstracts of Proofs.

34. Ordered that all motions, demurrers and exceptions hereafter filed must be supported by written or printed briefs, to be filed in duplicate with such motion, demurrer or exception. Failure to file such briefs shall be deemed a waiver of such motion, demurrer or exception. If oral argument is desired by the party he shall request it at the time of filing his briefs. The adverse party shall have fifteen days after the briefs of the moving party are filed in which to file answering briefs in duplicate. If such party desires an oral argument it must be requested at the time of filing his briefs.

Adopted Sept. 27, 1892. Briefs in Support of Motions, etc.

When any motion, demurrer or exception is filed, accompanied by briefs, the clerk shall forthwith notify the adverse party thereof.

All pending motions, demurrers and exceptions must be supported by written or printed briefs, to be filed within fifteen days after service of a copy of this rule, or such motions, demurrers or exceptions shall be deemed to be waived.

Waiver.

35. Ordered, that in all actions at law, founded upon any instrument in writing, or upon an account, and to which an answer has been or shall be filed, if it shall be shown to the court by affidavit of the plaintiff or other competent witness that such answer or any paragraph thereof is false or sham, the court shall enter a rule against the party filing such answer or paragraph requiring him to file the affidavit of the defendant or other competent witness within ten days thereafter, showing that such answer or paragraph is filed in good faith and not for delay, and that he has good reason to believe and does believe that the matter set up in such answer or paragraph, or a material part

Adopted April 15, 1895. Sham Pleadings.

thereof, is true; and failing to file such affidavit within the time limited, such answer or paragraph shall, on motion of the plaintiff, be stricken out as false and sham without the benefit of any exception to such ruling.

36. Ordered, that prayers for instruction in all cases at law tried in the circuit or district court must be presented to the court and counsel on the opposite side before the commencement of the argument of the cause to the jury, and must be distinctly written or printed, and each prayer for instruction must be separately numbered and embrace only a single proposition. And all exceptions to the charge of the court must be taken and reserved before the jury retire and must specifically state the part or parts of the charge excepted to and the grounds of objection thereto, as well as the modification thereof desired; otherwise no exception will be allowed.

Adopted Oct. 26, 1895. Instruction of Jury.

37. Ordered, that in all cases now pending or hereafter brought in this court, where the attorney of either party is not a resident of this district, a statement in writing shall be filed in the case, naming an attorney, a resident of this district upon whom notices or papers may be served.

Adopted Dec. 26, 1895. Foreign Attorneys.

38. It is ordered by the court that whenever, in the absence of the regular juries at any term of the court, it may be necessary to summon a special jury for the trial of any cause or causes, the same shall be drawn, according to law, from citizens of Marion county who are legally qualified for service as jurors, unless it is otherwise ordered by the court.

Adopted Feb. 7, 1898. Special Juries.

39. Ordered, that before any attorney shall be admitted to prosecute any suit for any poor person who has been permitted to bring or continue such suit without pre-payment or security for fees and costs as provided in the statutes of the United States, he shall file his written consent that the court may fix the amount of compensation for his services, and that the amount so fixed shall be accepted by him in full payment for the same.

Adopted June 6, 1898. Attorney for Poor Person.

40. In all common law causes the defendant shall be required to file his answer to the declaration or complaint within ten days after entering his appearance.

Adopted Mch. 22, 1899. Answer in Common Law Cases.

41. Ordered by the court that rule 24 be and the same is hereby amended to read as follows:

Adopted Apr. 26, 1899.

When any cause pending in this court at common law is at issue, or any cause pending therein in equity or in admiralty is ready for hearing, the counsel of either party, within thirty days thereafter and upon notice to the other party, may apply to one of the judges of the court for the transfer of the same to the docket of the court at New Albany, Evansville, Fort Wayne or Hammond, and if the judge shall be of the opinion that such causes should be tried or heard at either of said places he shall order accordingly; and thereupon witnesses may be subpœnaed for attendance at the place so fixed for hearing or trial.

Transfer of Causes.

This rule shall apply to criminal cases on application of the district attorney or the defendant.

The parties may also stipulate by writing filed with the clerk for the trial or hearing of any cause at either of said places.

The transfer of causes may be made from anyone of said courts to the other by the order of the judge on his own motion when in his opinion the transfer ought to be made, either in term or in vacation.

42. It is ordered that rule No. 12 of this court, adopted on November 14, 1872, be and the same is hereby amended to read as follows:

Adopted Apr. 11, 1901.

It is ordered by the court that in all cases at law and in equity, whenever a pleading is filed there shall be filed with it a copy of such pleading with all the exhibits made part thereof by reference or otherwise for the use of the opposite party who shall be entitled to such copy on receipting therefor on the original pleading.

Copies of Pleadings and Exhibits.

RULES IN ADMIRALTY,

In Addition to Those Prescribed by the Supreme Court.

---

1. All process shall bear date on the day on which it is issued, and shall be made returnable to the office of the clerk on the first Monday of every month, if there be twenty days between the date of such process and the first Monday of the then succeeding month; otherwise it shall be returnable to the first Monday of the month following, unless such process shall be made returnable to some special session of the court to be ordered in conformity to the preceding rule.

Return of Process.

2. In all suits *in rem,* wherein notices of the arrest of any vessel, goods, or other thing is required by the 9th rule in admiralty prescribed by the supreme court, such notice shall be published in some newspaper of general circulation printed in the city of Indianapolis, and in some such paper printed in the county where such vessel, goods, or other thing shall at the time of such arrest be situate.

Notice of Arrest.

3. Ordered by the court that rule 2 in Admiralty be so amended that in cases of seizure of property for violation of the revenue laws, the notice required shall be published only in some newspaper of general circulation printed and published in the city of Indianapolis.

Adopted Dec. 31, 1870 Publication.

Ordered by the court, that rule 2 in admiralty be further amended in this, that in causes wherein the original process is issued either at Evansville or New Albany, the publication required shall be made in those places respectively, in lieu of the publication to be made at Indianapolis.

Adopted Sept. 4, 1871. At Evansville or New Albany.

§ 923. **Seizures for forfeiture in certain cases.**—When any vessel, goods, wares, or merchandise are seized by any officer of the customs, and prosecuted for forfeiture by virtue of any law respecting the revenue, or the registering and recording, or the enrolling and licensing of ves-

sels, the court shall cause fourteen days' notice to be given of such seizure and libel, by causing the substance of such libel, with the order of the court thereon, setting forth the time and place appointed for the trial, to be inserted in some newspaper published near the place of seizure, and by posting up the same in the most public manner for the space of fourteen days, at or near the place of trial; and proclamation shall be made in such manner as the court shall direct. And if no person appears and claims such vessel, goods, wares, or merchandise, and gives bond to defend the prosecution thereof and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law.

§ 988. **Bailing of property seized under customs laws.**—Upon the prayer of any claimant to the court that any vessel, goods, wares, or merchandise, seized and prosecuted under any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, or any part thereof, should be delivered to him, the court shall appoint three proper persons to appraise such property, who shall be sworn in open court, or before a commissioner appointed by the district court to administer oaths to appraisers, for the faithful discharge of their duty; and the appraisement shall be made at the expense of the party on whose prayer it is granted. If, on the return of the appraisement, the claimant, with one or more sureties, to be approved by the court, shall execute a bond to the United States for the payment of a sum equal to the sum at which the property prayed to be delivered is appraised, and produce a certificate from the collector of the district where the trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the vessel so claimed, have been paid or secured in like manner as if the same had been legally entered, the court shall, by rule, order such vessel, goods, wares, or merchandise to be delivered to such claimant; and the said bond shall be lodged with the proper officer of the court. If judgment passes in favor of the claimant, the court shall cause the said bond to be canceled; but if judgment passes against the claimant, as to the whole or any part of such vessel, goods, wares, or merchandise, and the claimant does not within twenty days thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such vessel, goods, wares, or merchandise so condemned, with the costs, judgment shall be granted upon the bond, on motion in open court, without further delay.

§ 940. **In cases of seizure, bailing of property in vacation.**—In any cause of admiralty and maritime jurisdiction, or other case of seizure, depending in any court of the United States, any judge of the said court, in vacation, shall have the same authority to order any vessel or cargo or other property to be delivered to the claimants upon bail or bond, or to be sold when necessary, as the said court has in term time, and to appoint appraisers, and exercise every other incidental power necessary to the complete execution of the authority herein granted; and the recognizance of bail or bond under such order may be executed before the clerk upon the party's producing the certificate of the collector of the district, of the sufficiency of the security offered; and the same proceedings shall be had in case of said order of delivery or of sale as are had in like cases when ordered in term time: *Provided*, That

upon every such application, either for an order of delivery or of sale, the collector and the attorney of the district shall have reasonable notice in cases of the United States, and the party or counsel in all other cases.

§ 941. **Delivery bond in admiralty proceedings.**—When a warrant of arrest or other process *in rem* is issued in any case of admiralty jurisdiction, except the case of seizure for forfeiture under any law of the United States, the marshal shall stay the execution of such process or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libelant, with sufficient surety, to be approved by the judge of the court where the cause is pending, or, in his absence, by the collector of the port conditioned to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court, and judgment thereon against both the principal and sureties may be recovered at the time of rendering the decree in the original cause.

3. The.....Bank, at Indianapolis, is hereby designated as the place of deposit for moneys paid into the court, unless otherwise specially ordered by the court; and the proceeds of all sales in admiralty, made in pursuance of an order of the court, shall be immediately paid over to the clerk of said court by the officer making the sale, and by said clerk (unless otherwise ordered by the court) be immediately placed on deposit at the bank aforesaid.

Deposit of Moneys.

4. All libels praying process of arrest, whether *in rem* or *in personam*, shall be verified by the oath or affirmation of the libelant, unless for sufficient cause such oath be dispensed with by special order of the judge. All libels, answers and other pleadings shall be signed by the party in his own proper handwriting, and in like manner by the proctor for the party in whose behalf they are filed, unless for special cause shown such signature shall be dispensed with by leave of the court.

Verification of Libel.

5. In suits *in rem*, mesne process shall be served and the required notices given at least fourteen days before the return day of the process, unless a shorter time shall be prescribed by special order founded on the exigencies of the particular case.

Mesne Process and Notices.

6. All process, and all notices for publication in a newspaper in pursuance of rule 9 of the Rules of Practice in Admiralty and Maritime Causes, prescribed by the supreme court, shall be drawn up by the clerk; and no process except subpœnas shall be issued by him in blank.

Process and Notices Drawn by Clerk.

7. The notice mentioned in the last preceding rule shall contain the title of the suit, a summary statement of the cause of action, the amount claimed by the libelant, and the day and place fixed for the return of the process; and shall have the name of the proctor of the libelant, and that of the marshal or his deputy by whom the arrest shall have been made, suffixed thereto.

Contents of Notice.

8. The amount of the debt or damages for which the action is brought shall be stated in the libel, and with the addition thereto, for costs, of two hundred and fifty dollars for a suit *in rem,* and of one hundred dollars in a suit *in personam,* shall be indorsed on the mesne process, thus: "Action for $——."

Costs.

9. When the libelant is not a resident of the district, he shall, at the time of commencing his suit, give bond or stipulation, with one or more sufficient securities, in the sum of at least two hundred dollars, if the suit is *in personam;* and in the sum of at least two hundred and fifty dollars, if the suit be *in rem*—conditioned that he will appear from time to time, and abide by all orders, interlocutory and final, of the court, and pay the costs and expenses, if any, which shall be awarded against him, by the final decree of this court, or of any appellant court:

Stipulation of Libelant.

Provided, however, That this regulation shall not extend to suits for seamen's wages, nor to suits for salvage, when the salvors have come into port, in possession of the property libeled.

Proviso.

§ 970. Claimant not entitled to costs when reasonable cause of seizure.—When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any act of congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution. *Provided,* That the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent.

§ 971. Double costs, when plaintiff is non-suited in action against officer making seizure, etc.—If, in any suit against an officer or other person executing or aiding or assisting in the seizure of goods, under any act providing for or regulating the collection of duties on imports or tonnage, the

plaintiff is non-suited, or judgment passed against him, the defendant shall recover double costs.

§ 978. Costs in libels against vessel and cargo.—When proceedings are had before a court of the United States or of the territories on several libels against any vessel and cargo, which might legally be joined in one libel, there shall not be allowed thereon more costs than on one libel, unless special cause for libeling the vessel and cargo separately is satisfactorily shown on motion in open court. And in proceedings on several libels or informations against any cargo, or parts of cargo, or merchandise seized as forfeited for the same cause, there shall not be allowed more costs than would be lawful on one libel or information, whatever may be the number of owners or consignees therein concerned. But allowance may be made on one libel or information for the costs incidental to several claims.

§ 979. Claimant's costs to be paid before possession, when, etc.—When judgment is rendered in favor of the claimant of any vessel or other property seized on behalf of the United States, and libeled or informed against as forfeited under any law thereof, he shall be entitled to possession of the same when his own costs are paid.

Dismissal.

10. In all cases not embraced within the last preceding rule, on motion of the defendant or claimant, the court will in its discretion direct the libelant, on pain of dismissing his libel to give the like security.

Deposit in Lieu of Bond.

11. Instead of the security specified in the last two preceding rules, the party from whom it is required, may at his option, deposit in court a sum of money of the like amount.

Non-resident Libelant.

12. If, in any case, a libel shall be filed in behalf of a libelant who is not a resident within the district, before security for costs and expenses shall be filed as required by rule 10, the proctor for such libelant shall be liable for such costs and expenses to the amount specified in said rule, until such security shall be filed; and the payment thereof may be enforced by summary process *in personam* against such proctor.

Copy of Libel for Defendant.

13. When the proctor is retained to defend in any suit before the return day of the mesne process therein, who resides or has his place of business more than three miles from the clerk's office, and not more than three miles from the residence or place of business of the proctor for the libelant, such proctor for the defendant may at any time before the return day of the process serve a notice of his retainer on the proctor for the libelant; and it shall thereupon be the duty of the proctor for the libelant, without delay, to serve on the proctor for the defendant a copy of the libel on file.

14. When the defendant's answer, or any other proceeding subsequent to the libel, is put in by being simply filed in the clerk's office, instead of being given in open court in the presence of the proctor or advocate for the adverse party, a copy thereof, with notice of the time of filing the same, shall, without delay, be served on the proctor of such party.

Copy of Answer.

15. When a decree is made in the absence of the proctor of either party to the suit, unless such proctor resides at the place where the clerk's office is kept, it shall be the duty of the clerk immediately to transmit to him by mail a copy of the decree; and such proctor or party shall be responsible to the clerk for the fees to which he may be entitled for such service, according to the usual rate of charge.

Copy of Decree.

16. Not less than six days' notice shall be given of the sale of property on final process; and when, in the opinion of the marshal or his deputy, by whom the sale is to be made, and the circumstances of the case require a longer notice, he may in his discretion extend it to any time not excedeing twenty days.

Sale on final process.

§ 939. **Sale after condemnation.**—All vessels, goods, wares, or merchandise which shall be condemned by virtue of any law respecting the revenue from imports or tonnage, or the registering and recording, or the enrolling and licensing of vessels, and for which bonds shall not have been given by the claimant, shall be sold by the marshal or other proper officer of the court in which condemnation shall be had, to the highest bidder at public auction, by order of such court, and at such place as the court may appoint, giving at least fifteen days' notice (except in cases of perishable merchandise) in one or more of the public newspapers of the place where such sale shall be; or if no paper is published in such place, in one or more of the papers published in the nearest place thereto; for which advertising a sum not exceeding five dollars shall be paid. And the amount of such sales, deducting all proper charges, shall be paid within ten days after such sale by the person selling the same, to the clerk or other proper officer of the court directing such sale, to be by him, after deducting the charges allowed by the court, paid to the collector of the district in which such seizure or forfeiture has taken place, as hereinbefore directed.

17. For the custody of vessels and other property while under arrest, the marshal shall be entitled to such fees and compensation as may be allowed by order of the judge.

Allowance to Marshal for Custody of Property.

18. When interrogatories are propounded by the defendant at the close of his answer, touching any matter charged in the libel, or touching any matter of defense set up in the answer according to rule 3 of the rules of practice prescribed by the supreme court, the libelant shall answer the same within twelve days, unless, for sufficient cause shown, he shall by special order be allowed a longer period; and the court may, in its discretion, require such interrogatories to be answered within a shorter time or instanter. **Answer to Interrogatories.**

19. When interrogatories are propounded to a garnishee (in pursuance of rule 37 of the rules of practice prescribed by the supreme court) a copy thereof shall be served upon the garnishee personally, or in case of his absence from his dwelling house or usual place of abode, by leaving such copy with some person of suitable age, who is a member or resident of the family, and the garnishee shall be required to answer the interrogatories within twelve days after such service, unless a longer period shall, for adequate cause shown, be by special order allowed for that purpose; and the court may also, in its discretion, prescribe a shorter period. **Garnishee.**

20. Exceptions to the libel (taken in pursuance of rule 36 of the Rules of Practice prescribed by the supreme court) for surplusage, irrelevancy, impertinence, or scandal, may be taken, *ore tenus*, on the return day of the mesne process; and exceptions to the answer or other allegation given by the defendant, taken for the like causes, in pursuance of the same rule, or in pursuance of rule 27, for want of sufficiency, fullness, or distinctness, may be taken in like manner, when the answer or other allegation is put in, in open court; and the court will thereupon, in its discretion, either decide upon the sufficiency of the exceptions so taken *instanter*, or direct the same to be drawn up in writing, and appoint a day to hear argument thereon, or refer the same to a commissioner. **Exceptions.**

21. When, at the return of the mesne process, further time has been granted to answer the libel; and the answer, instead of being produced and offered in open court in the presence and hearing of the advocate of the libelant, is simply filed with the clerk, a copy thereof shall, without de- **Answer and Exceptions.**

lay, be served on the proctor for the libelant, personally, if he resides within three miles of the proctor for the defendant—otherwise, either personally or by mail—and the proctor for the libelant may, within ten days after the service thereof, file and serve exceptions thereto. The defendant, within eight days after the service of such exceptions, may give a written notice of his submission to any or all of them; and if any of them are not submitted to within the time prescribed, the libelant may bring the same to a hearing before the court, by giving at any time within six days a notice of not less than six, nor more than ten days of such hearing. Every exception not submitted to, and which is not notified for hearing within the time specified, shall be considered as abandoned.

22. When exceptions are referred to a commissioner, if the party who obtained the reference shall not procure and file the commissioner's report, within fourteen days from the date of the order of reference, unless further time shall be allowed for sufficient cause shown, by special order, the exceptions shall be considered as abandoned. The party by whom the reference was obtained shall have eight days after filing the report of the commissioner, to except thereto. On filing the report, he shall give notice of filing the same to the adverse proctor, who shall have eight days after such notice to except to the report.

Reference of Exceptions.

Exceptions to a commissioner's report may be noticed for argument by either party, and the notice shall be served at least six days before the day designated for the hearing.

23. All appeals to the circuit court must be interposed within ten days from the date of the decree, or within such other period as shall be designated by special order made in the particular suit; and in cases where the right of appeal is allowed, no final process shall issue before the expiration of ten days or other period prescribed.

Appeals.

Rules in Bankruptcy.

1. All petitions by or against any person or corporation in bankruptcy shall, in addition to the deposit of money required by law, be accompanied by an undertaking with sureties approved by the clerk, for the payment of such actual and necessary expenses as may be incurred for the publication of notices, travel of the referee and trustee, and the blanks, stationery and record books of the referee in each case, and all such expenses shall be taxed as costs therein.

Adopted Oct. 3, 1898. Undertaking for Costs.

2. It is ordered that when the creditors of any bankrupt fail to select a trustee of his estate, it shall be the duty of the referee before whom the proceedings are pending, to select a trustee and require of him to give a bond in a sum not less than the value of such estate as shown in the schedules.

Adopted Oct. 26, 1898. Bond of Trustees.

All bonds taken by a referee shall be accompanied by a justification on the part of the sureties as required by law and a certificate of his approval thereof.

3. All banks organized under the laws of the United States and all banks and trust companies organized under the laws of the State of Indiana, in any referee district, are hereby designated as depositories for the funds in bankruptcy cases pending before the referee therein, and any one of said banks or trust companies shall be authorized to receive such funds upon filing with the clerk of this court a bond in the sum of $5,000, with sureties approved by said referee.

Adopted Oct. 29, 1898. Amended Nov. 12, 1906. Depositories.

Trustees shall report their deposits as they are made in each case, to the referee before whom the same is pending, and their checks against such deposits shall be countersigned by him; and whenever the bankruptcy deposits in any bank or trust company shall equal or approximate the amount of its bond, it shall be the duty of said referee to require of such bank or trust company an additional bond in an amount large enough to cover any further deposits that may be made therein.

4. Ordered by the court that all petitions for the allowance of solicitors' fees in any bankruptcy case shall be presented to the referee in charge thereof, and thereupon evidence shall be taken by the referee concerning the character and value of the services of the petitioner, and such evidence shall be forthwith returned into the clerk's office with the finding and opinion of the referee thereon and the recommendation of the trustee concerning the same; and all allowances by the court shall be subject to the right of any creditor on the submission of the accounts of the trustee at a meeting of the creditors to file exceptions thereto.

Adopted Mch. 1, 1899. Solicitors' Fees.

5. In all cases where it appears to the satisfaction of a referee that there are no assets, after exemption of property to the bankrupt and payment of costs, it shall be the duty of the referee to file his final record with the clerk on or before the expiration of thirty days from the date of adjudication.

Adopted Apr. 14, 1899. Referee's Record.

6. All petitions for the review of any order or decision by a referee shall be filed with him within ten days after the same is made, and be accompanied by an assignment of errors and the brief of the petitioner, and the proceedings shall thereupon be certified by the referee into the clerk's office of this court, as required by General Order No. 27, and Form 56, of the General Orders and Forms in Bankruptcy of the Supreme Court of the United States. And the opposing party shall have ten days after the filing thereof in the clerk's office within which to file his brief in answer thereto; and upon the expiration of that period of time the case shall be taken as submitted.

Adopted Oct. 30, 1900. Petitions for Review.

All petitions and accompanying assignment of errors and all briefs shall be filed in duplicate, and a failure to file them within the time fixed shall be taken as a waiver of the rights of the parties respectively.

7. Every attorney in presenting his claim for legal services in any bankruptcy proceeding to the referee shall file with him an itemized statement of every item of service for which he asks compensation, stating fully and particularly the character of the service, the length of time necessarily

Adopted Feb. 5, 1901. Solicitors' Fees.

employed, and his estimate of its value under oath; and no claim for such services shall be received unless such itemized claim is presented to the referee.

On receiving such claim, the referee shall hear the evidence thereon, reporting to the court his finding thereon as to the value of such services, and return such finding with all the evidence to the judge of the court with all convenient dispatch.